IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CIVIL WRIT PETITION NO.1219/07

Municipal Board Sarwar

Versus

Ram Lal Keer & Anr.

DATE OF ORDER :: 02/04/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. K.N. Gupta, for petitioner

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Instant petition has been filed by petitioner assailing the Award passed by the learned Labour Court & Industrial Tribunal, Ajmer dated 14th November, 2006.

Learned Tribunal in the impugned Award has recorded a finding that respondent-workman had worked on daily wages basis from 1st January, 1996 to 31st July, 1998 and this fact was averred by the workman in his statement of claim and so also in the affidavit which he has filed before the Tribunal. Neither at the stage of cross-examination nor at any later stage material was placed by petitioner which may controvert the fact with regard to his actual working for more than 240 days as referred to by him in his statement of claim. It has further been pointed out at this stage that after filing of written statement, no one appeared on behalf of

petitioner in support thereof in the witness box. In the absence whereof, the learned Tribunal on the basis of material which has come on record recorded a clear finding of his working of more than 240 days, accordingly, held that since there was violation of Section 25-F of the Act, 1947, the workman was entitled for reinstatement. However, wages for the intervening period were denied to him.

Counsel for petitioner Shri K.N. Gupta vehemently contends that the finding of workman worked for more than 240 days was disputed by petitioner in their written statement, but despite the same, if the appointment of respondent-workman was de hors the rules even if worked for more than 240 days and there is violation of Section 25-F of the Act, 1947 that will not hold him to be entitled for reinstatement and the finding recorded by the Tribunal under the Award impugned is not legally sustainable and in support of his contention, counsel has placed on the judgment of this court in **Mahesh Kumar Jain Vs. Municipal Board Pidava, District Jhalawar, D.B. Civil Special Appeal [Writ] No.296/05, decided on 5th September, 2006** and so also of Apex Court in **Rajasthan Tourism Development Corporation Ltd. Vs. Intejam Ali Zafri [2006(5) Supreme 543]**.

Counsel further contends that onus was on the workman to prove that he had worked for more than

240 days and in support of his contention, counsel has placed reliance on the judgment of Supreme Court in **Krishna Bhagya Jala Nigam Ltd. Vs. Mohammed Rafi [2006 (6) Supreme 653]**.

I have considered the submission of the counsel and perused the material available on record.

The workman in his statement of claim and so also in affidavit specifically averred about his working for more than 240 days. To be more specific, his case was that he had continuously worked on daily wages basis from 1st January, 1996 to 31st July, 1998 which undisputedly makes his working for more than 240 days as provided under Section 25B of the Act, 1947 in 12 months preceding from the date his services were dispensed with. Respondents in their written statement have just disputed with regard to his working, but despite opportunity, no material in support thereof was placed on record and even no one turned up on their behalf in witness box in support of their contention. Copy of the written statement has also been placed on record as Ann.2 wherein in Para 11 of additional pleas a vague statement has been made in the manner that the workman had not worked continuously from 1st January, 1996 to 31st July, 1998 and on the basis of material on record, it could not be disputed that the workman was able to discharge his onus. In such circumstances, the finding, which has

been recorded of his working for more than 240 days in 12 months preceding from the date of his termination, by the learned Tribunal, in my opinion, is duly supported by material on record and does not call for interference.

The judgment on which counsel has placed reliance in **Krishna Bhagya Jala Nigam Ltd. Vs. Mohammed Rafi [supra]** is of no assistance for the reason that it was a case where onus was on the workman to prove and in the instant case, the workman on the basis of material, was able to prove that he had worked for more than 240 days.

As regards the submission made by the counsel that even if he had worked for more than 240 days, he was not entitled for reinstatement, in my opinion, is of no merit for the reason that if there is violation of Section 25-F of the Act, 1947, reinstatement is a rule and compensation in lieu thereof is an exception which ordinarily is not be interfered with unless there is material placed on record in support thereof. In the facts of the instant case, when the Tribunal after examining the material on record considered to pass an Award of reinstatement, I do not find any error committed by the Tribunal in this regard.

As regards the judgment in **Rajasthan Tourism Development Corporation Ltd. Vs. Intejam Ali Zafri [supra]** on which counsel has placed reliance is of no assistance to petitioner for

the reason that in Para 2 of the judgment, the Apex Court observed that actual working of the workman was of 227 days, thus, in the absence of working for 240 days, there was hardly any occasion for the employer to comply the provisions of Section 25-F of the Act, 1947. In such circumstances, the observation made will be of no assistance to petitioner.

As regards the judgment of this court in **Mahesh Kumar Jain Vs. Municipal Board Pidava, District Jhalawar [supra]** also appears to be in the matter where someone is seeking appointment or regularization of his service, but in the instant case, particularly, when the petitioner had failed to comply the provisions of Section 25-F of the Act, 1947, I do not find any error committed by the learned Tribunal in passing Award of reinstatement. However, in the facts of the instant case, the learned Tribunal has not granted him back wages for the intervening period. In such circumstances, I do not find any error committed by the learned Tribunal, which calls for any interference.

Consequently, the writ petition fails and is hereby dismissed.

[AJAY RASTOGI],J.

FRBOHRA,JR.P.A.